

For Landlords/Property Managers of Apartments
Under San Jose's Apartment Rent Ordinance:

Questions & Answers for
the Interim Amendment to the Apartment Rent Ordinance

This document is intended to provide you with information regarding the Interim Amendments (**Interim Ordinance**) to the Apartment Rent Ordinance (**ARO**). It contains two sections: one for general questions and one for questions specific to landlords/property managers regarding implementation and compliance with the Interim Ordinance. If you have any questions regarding your rights and responsibilities regarding the Interim Ordinance, please contact Ramo Pinjic at (408) 975-4474.

General Questions

1. What is the Interim Ordinance?

The Interim Ordinance is a temporary ordinance modifying the Apartment Rent Ordinance (ARO) which the City Council adopted on May 17, 2016. It becomes effective on June 17, 2016. It expires on the earlier of 60 days after the adoption of final amendments to the ARO or January 1, 2017.

2. What modifications did the Interim Ordinance adopted on May 17, 2016 make to the ARO, San José Municipal Code Chapter 17.23?

The ARO is found in Chapter 17.23 of the City's Municipal Code. The Council-adopted Interim Ordinance adds a Part 8 to the ARO and makes the following changes once it becomes effective on June 17, 2016:

- (a) reduces the annual allowable rent increase from 8% to 5%.
- (b) reduces the amount of rent increase a hearing officer may impose on top of capital improvement pass through from 5% to 2%.
- (c) establishes a fair return petition process and standard, effective after September 1, 2016;
- (d) provides that other petitions for rent increases in excess of 5% may not be filed after September 1, 2016.

3. When will those modifications become effective?

The Interim Ordinance becomes effective on June 17th. Specifically, the modifications described in 2(a) and (b) above are effective on June 17, 2016. Modifications 2(c) and 2(d) above become effective after September 1, 2016.

4. How long will the Interim Ordinance be in effect?

The Interim Ordinance will expire upon the earlier of: 60 days after the effective date of the permanent modifications to the ARO or January 1, 2017.

5. Where can I find the Interim Ordinance that was approved by the City Council?

The Interim Ordinance can be found here: <http://www.sanjoseca.gov/index.aspx?nid=4744> 1

6. Where I can I find the entire ARO?

The ARO is codified in San Jose's Municipal Code as Chapter 17.23, which can be found online (<http://www.sanjoseca.gov/DocumentCenter/View/1162>). Paper copies of the ARO can be requested by contacting the Housing Department at 408-975-4480.

Landlord Questions

1. When does the 5% annual allowable increase go into effect?

The 5% limit on the annual allowable increase is effective on June 17, 2016 and applies to any rent increase effective on or after that date. The increase is effective on the first day that the increased rent is due (**Rent Increase Effective Date**).

This means that if you have delivered a lawful rent increase notice that requires a first increased rent payment on June 1, it will be subject to the existing rent increase limits in the ARO, not the 5%. If instead, the Rent Increase Effective Date is on June 17, 2016 or later, the increase is limited to 5%. Please note that under the ARO you may not increase the rent until 12 months after the last increase.

2. How much notice do I need to give my tenants if I want to raise their rents?

The amount of notice required to take certain rent increases is governed by State law. State law requires a minimum of 30 days notice but longer notice periods may be required. Please refer to the following State website for more information:

<http://www.dca.ca.gov/publications/landlordbook/living-in.shtml>

3. I raised rents 8% effective on June 1, 2016. Is that allowed?

If the increase complied with state law and the existing ARO (e.g., no more than one increase every 12 months and proper notice was provided) it is allowed, since the Rent Increase Effective Date was prior to June 17.

4. On May 1, 2016 I sent a notice that informed tenants I was going to raise rents 8% effective on June 30, 2016. Is that allowed? Do I need to roll back the rents?

Since the Rent Increase Effective Date is after June 17, 2016, no more than a 5% rent increase may be collected by the landlord. If you have not collected any of the noticed rent, you may send or deliver a notice of correction informing the tenant of the reduction in the rent increase. There is a sample notice of correction available on the Housing Department's website at: <http://www.sanjoseca.gov/index.aspx?NID=5088>.

If you have collected any rent increase in excess of 5%, you must refund or credit the excess amount to the tenant in order to comply with the ARO. There is a sample notice of refund available on the Housing Department's website at: <http://www.sanjoseca.gov/index.aspx?NID=5088>.

5. I have not raised my tenant's rent since June 2013, but I gave notice of a 21% rent increase in April 2016. Is that allowed?

If the Rent Increase Effective Date is before June 17, 2016 and the notice complied with State law and the existing ARO (e.g., an increase of up to 21% is allowed if it has been more than 2 years since the prior increase) it is allowed. If the Rent Increase Effective Date is on or after June 17, 2016, the increase cannot exceed 5%.

6. When does the debt-service pass-through go away?

No landlord may petition for debt-service pass-through after September 1, 2016.

7. I recently purchased an ARO apartment and want to pass-through debt-service costs to my tenants. Can I do that?

A landlord may petition for debt-service pass-through until September 1, 2016. This means that the petition must be completed, submitted along with the required supporting documents to the City's Rental Rights and Referrals Program (RRRP), and deemed eligible by RRRP staff before or on September 1, 2016.

8. I have a debt-service pass-through pending at my building but some of related the rent increases cannot take effect until October 1, 2016 because the last increase given to the tenant was on Oct. 1, 2015. Is this pass through now not allowed or can I petition for it now and as long as I file the petition before Sept. 1, 2016 it will be considered?

The petition will be considered provided the debt service petition is (a) complete on September

1, 2016 (including supporting documents, cost worksheets, list of tenants, etc.), (b) noticing requirements are met, and (c) the debt service and increase and petition comply with the existing timing requirements including the requirement that (i) increased debt service costs must be from a loan incurred in the twelve months prior to the rent increase and (ii) if single arbitration hearing is sought, units subject to the rent increase have been acquired within ninety days of the proposed rent increase.

9. When does the existing capital improvement pass-through process go away?

No landlord may petition for a rent increase for capital improvement pass-through costs listed in Section 17.23.440 of the Municipal Code, including capital improvement pass-through, after September 1, 2016.

A capital improvement pass-through process will be included in the permanent modifications that are anticipated to be brought to Council later this year.

10. When does the process for the other non-debt service pass-throughs go away?

No landlord may petition for a rent increase for capital improvement, rehabilitation, and operations and maintenance pass-through costs, listed in Section 17.23.440.A of the Municipal Code, after September 1, 2016.

11. What is maintenance of net operating income (MNOI)?

Maintenance of net operating income is a standard used by municipalities to establish whether annual allowable rent increases provide a fair return to the landlords. Under an MNOI standard, a landlord is getting a fair return if the landlord's current net income is equal to or greater than net operating income in a base year adjusted for inflation. The Interim Ordinance establishes 2014 as the base year and provide for an inflation adjustment of 100% of the Consumer Price Index for All Urban Consumers (CPI-U) for the San Jose metropolitan area.

12. When does the fair return process begin? How does the fair return process work?

This petition process will begin after September 1, 2016.

13. How does the fair return petition process work?

The specifics of the process will be described in the petition form and regulations that are currently under development.